

LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' PLAN 2 RETIREMENT BOARD

Death Benefits Preliminary Report

June 23, 2005

1. Issue

LEOFF Plan 2 members who die prior to retirement are entitled to certain benefits for their survivors. Members who are killed in the line of duty are extended additional special benefits.

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3. Members Impacted

Any LEOFF Plan 2 member who dies may be affected. As of September 30, 2003 there were 14,560 active members as reported in *The Office of the State Actuary's 2003 LEOFF 2 Actuarial Valuation Report*.

4. Current Situation

A LEOFF Plan 2 member that dies before retirement is entitled to a standard death benefit that ranges from a refund of contributions up to a Joint and 100 percent survivor benefit paid to a surviving spouse or minor child. The amount of the benefit is determined by the number of years the member has in the system.

If a member dies as a result of an "injury" sustained in the course of employment, a \$150,000 special death benefit will be paid to the designated beneficiary. "Injury" for the purpose of qualifying for the \$150,000 death benefit does not include the presumption that certain illnesses are occupational diseases for fire fighters.

5. Background Information

Standard LEOFF Plan 2 Death Benefits

If a member dies before retirement, whether duty related or not, the designated beneficiary is eligible for certain benefits. The standard death benefit does not make any distinction between death for injury or illness. Regardless of the cause of death, the standard pension benefits will be paid to the beneficiaries.

If the member dies with less than 10 years of service credit and before becoming eligible to retire, the beneficiary receives all of the member's accumulated contributions. If the member has no living beneficiary, the accumulated contributions are paid to the surviving spouse, or if none, to the legal representative of the estate.

If the member dies and has 10 or more years of service credit or was eligible to retire, the surviving spouse, or if none, the guardian of any minor children, may choose between the following two benefits:

1. Payment of 150 percent of the member's accumulated contributions, or
2. A monthly benefit calculated as if the member had:
 - Elected Joint and 100% Survivor Option, and
 - Retired on the date of death.

If the member's spouse dies while receiving a survivor's retirement benefit and leaves a minor child or children, the children will continue to receive the benefit which was being paid to the surviving spouse. The benefit will be shared equally among the children and paid until they reach the age of majority (age 18).

If there is no surviving spouse at the time of the member's death, and there are minor children, the children will receive a benefit calculated the same as for a normal retirement, but with the assumption that the member had a spouse of the same age at the time of the member's death. If the member has no surviving spouse or minor children, accumulated contributions will be paid to the member's designated beneficiary. If there is no designated beneficiary or the member fails to file the proper form, the remaining contributions will be paid in a lump sum to the member's legal representative or estate.

These benefits also apply to designated beneficiaries of members who leave LEOFF-covered employment but do not withdraw their contributions.

Duty Related Special Death Benefit

The 1996 Legislature passed Engrossed Second Substitute Senate Bill 5322, which created a \$150,000 special death benefit for the Law Enforcement Officers' and Fire Fighters' Retirement System and Washington State Patrol Retirement System. The benefit was extended to members in the Public Employees' Retirement System (PERS), Teachers'

Retirement System (TRS) and School Employees' Retirement System (SERS) under House Bill 1207, passed during the 2003 legislative session and was effective July 27, 2003.

If an active member or disability retiree dies as a result of injuries sustained in the course of employment and the Department of Labor and Industries has determined eligibility for the payment, the Department of Retirement Systems (DRS) will pay a \$150,000 death benefit to the member's designated beneficiary.¹ This is a separate benefit that has no effect on any other benefits payable from LEOFF Plan 2. If an active member or disability retiree dies as a result of injuries sustained in the line of duty as a public safety officer, the benefits received by the member's survivors qualify for non-taxable status under federal and state law.

A person who dies as a result of an illness, such as an occupational disease, is not covered under this law and does not qualify for the special death benefit. This is different from the standard death benefit where a person who dies from either an injury or illness qualifies for the standard death benefit.

Occupational Disease

In 1987, the Legislature passed Engrossed Substitute Senate Bill 5801, which created a presumption that certain diseases contracted by fire fighters were occupationally related for industrial insurance purposes. As originally passed, this bill only included respiratory disease as an occupational disease².

The 2002 Legislature amended the definition of occupational disease to include heart problems that are experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances; cancer; and infectious diseases.

The presumption of cancer as an occupational disease only applies to a fire fighter where the cancer develops or manifests itself after the fire fighter has served at least 10 years and was given a qualifying medical examination upon becoming a fire fighter that showed no evidence of cancer. The presumption of cancer also only applies to the following specific types of cancer:

- Primary Brain Cancer
- Malignant Melanoma
- Leukemia
- Non-Hodgkin's Lymphoma
- Bladder Cancer
- Ureter Cancer
- Kidney Cancer

The presumption of infectious disease as an occupational disease only applies to fire fighters who have contracted the following:

- Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
- All Strains of Hepatitis
- Meningococcal Meningitis
- Mycobacterium Tuberculosis

A restriction to presumptive occupational disease exists which provides that occupational disease does not apply to a fire fighter who develops a heart or lung condition and who is a regular user of tobacco products or who has a history of tobacco use. In addition to tobacco use, the presumption of occupational disease may also be rebutted by a preponderance of evidence challenging the presumption including physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or non-employment activities.

State Workers' Compensation Death Benefits

The workers' compensation benefit for a surviving spouse in Washington is 60 percent of an employee's wage and up to a maximum of 70 percent for a surviving spouse with children³. This is a monthly benefit paid to the surviving spouse and children, if any. The widower and dependent benefits are not taxable. The benefits are not affected by the receipt of Social Security, other workers' compensation benefits, or state pension benefits.

A form of cost-of-living adjustment is made each July to the survivor benefit. The adjustment amount depends upon the percentage change in the state's average wage. A variety of factors exist that could cause a widower or dependent to receive less than the base rate for benefits. Staff at Labor and Industries identified Permanent Partial Deductions (loan against future benefits) and overpayments due to Social Security payments during time loss, as common reasons for reductions to widower benefits.

For an approved claim that was filed after July 1, 1986 and was related to injury or occupational disease, an immediate payment ("first survivor benefit paid") of 100 percent of the average monthly wage in the state of Washington for the preceding year may also be made. Currently, the average monthly wage being used for this calculation is \$3,232.83.⁴ The "first survivor benefit paid" is not taxable.

A burial benefit is paid when death is directly related to a workplace injury or occupational disease. The maximum burial benefit is 200 percent of the average monthly wage in the state of Washington for the preceding calendar year.

To receive workers' compensation benefits, the surviving spouse must file a claim. The Workers' Compensation Appeals Board determines whether the claim will be paid.

Federal Death Benefits – Public Safety Officers' Benefits Program (PSOB)

The Public Safety Officers' Benefits (PSOB) Act (codified at 42 U.S.C. 3796, et seq.) was enacted in 1976 to assist in the recruitment and retention of law enforcement officers and fire fighters. As defined by Congress in Public Law 90-351 (Sec. 1217), a public safety officer includes individuals serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or fire fighter. State and local law enforcement officers and fire fighters are covered for line-of-duty deaths occurring on or after September 29, 1976.⁵

The PSOB Program provides death benefits in the form of a one-time financial payment to the eligible survivors of public safety officers whose deaths are the direct and proximate result of a traumatic injury sustained in the line of duty. Because determining the eligibility of claimants under the PSOB Program is often time consuming, these benefits are not intended to meet emergency financial needs.

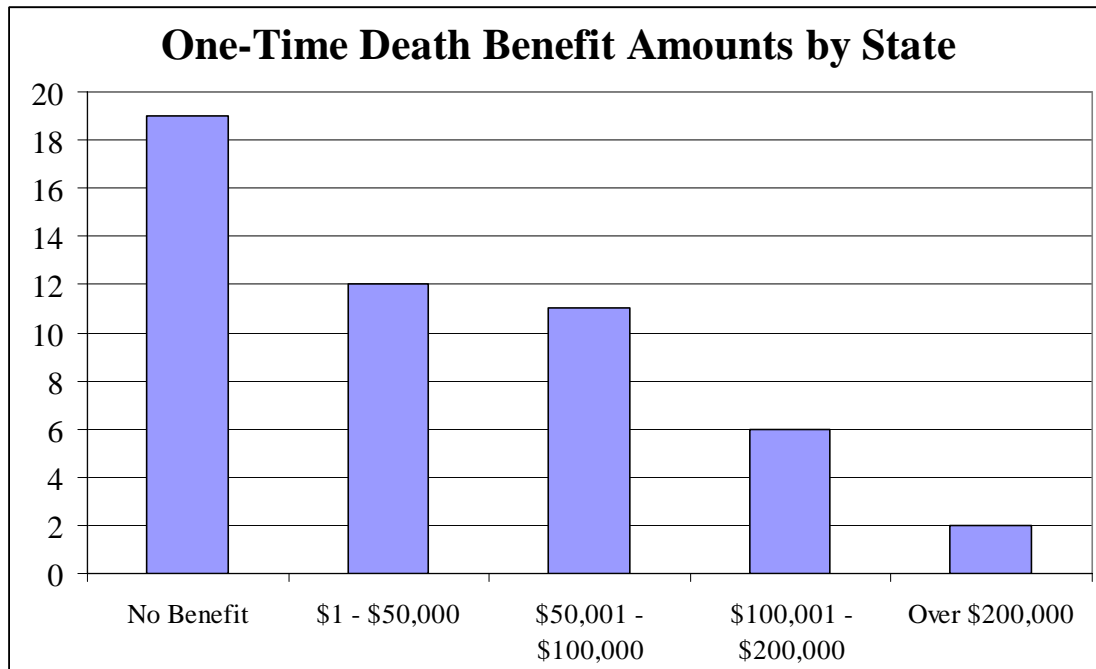
As of October 1, 2004, the PSOB benefit amount is \$275,658. Since October 15, 1988, the PSOB benefit has been adjusted each year on October 1, to reflect the percentage of change in the Consumer Price Index. For each death and disability claim, the award amount is solely determined by the actual date of the officer's death. The act ensures that the benefit will not be subject to execution or attachment by creditors. The Internal Revenue Service has ruled that the benefit is not subject to federal income tax (Revenue Ruling No. 77-235, IRB 1977-28) or to federal estate tax (Revenue Ruling No. 79397).

Beneficiaries of the PSOB Death Benefits Program must comply with the PSOB Office's administrative review process by producing sufficient evidence to show that the public safety officer died as the direct and proximate result of a personal injury sustained in the line of duty. The PSOB Act only covers deaths resulting from traumatic injuries sustained in the line of duty. The PSOB Act does not appear to have extensive coverage for occupational diseases. However, heart attack deaths are covered in some instances.

Heart attack deaths are covered if the decedent sustained a traumatic injury which contributed to the death to an equal or greater degree than a preexisting coronary condition (arteriosclerotic cardiovascular disease). Such a traumatic injury would include smoke inhalation if the level of carbon monoxide was above 10 percent for a nonsmoker or above 15 percent for a smoker.⁶

Other States' One-Time Death Benefit

According to information from the National Fallen Fire Fighters Foundation, more than 60 percent of the states provide some form of one-time death benefit. The state of Washington, with a \$150,000 one-time death benefit, is one of only eight states that provide a one-time death benefit that is more than \$100,000.



6. Policy Issue

Occupational Disease/Illness Coverage for Special Death Benefit

The special death benefit statute only provides benefits for an injury in the line of duty. Labor and Industries determines what injuries qualify for the benefit. Labor and Industries uses specific definitions to distinguish between an occupational injury and an occupational disease for purposes of workers' compensation. Thus, a person who dies from an injury on the job can qualify for the special death benefit whereas a person who dies from an occupational disease that arose out of employment does not qualify for the special death benefit.

The following brief descriptions for injury and occupational disease were provided by Labor and Industries:

Injury: An injury occurs in the “course of employment” and is a sudden, traumatic event that produces an immediate or prompt result. An injury occurs from an incident at a fixed point in time. What constitutes a fixed point in time has been expanded somewhat by court decisions to include incidents within one day. Examples of industrial injuries include: needle sticks, lacerations, sprains, fractures, specific exposures to chemicals.

Occupational Disease: An occupational disease is a disease or infection that “arises naturally and proximately out of employment...” The disease comes about over time, rather than from a fixed event.

To meet the definition of *arising naturally* out of employment, an occupational disease must be a natural consequence of distinctive conditions of employment and there can be no intervening independent, sufficient causes for the disease. The disease must arise from the distinctive job requirements, rather than merely the workplace or everyday life. The work conditions giving rise to the disease must be objectively verifiable, not subjective conditions peculiar to the worker. Occupational diseases can also develop from exposures or conditions with more than one employer.

There are three general categories of distinctive conditions (however, there may be other circumstances where a disease arises from distinctive job requirements):

- Increased Risk - There's a greater likelihood of contracting the disease on the job.
- Unique to Employment - The level and quantity of workplace exposure is atypical or uncharacteristic of the level and quantity of exposure in everyday life or other employments.
- Continuous and Specific Activity - The activity is required of the worker to perform the job duties.

As added clarification, a heart attack is not an allowable claim unless it can be determined that the work activity was unusual exertion for the individual worker. For example, an accountant with no history of heart problems who worked at a sedentary position, was moving furniture up and down stairs on a particular day when the office relocated, and suffered a heart attack is likely to have an allowable claim. But a furniture mover performing the same activity and suffers a heart attack is likely to have the claim rejected.

7. Policy Options

Option 1: Include all occupational disease in special death benefit

This option would amend the \$150,000 special death benefit statute to cover deaths that occur due to all occupational diseases, in addition to injury. Adding occupational disease under the special death benefit would provide benefits to members that contract one of the occupational diseases or cancers listed in the workers compensation statute, as well as those that die due to heart problems after exposure and respiratory disease.

Option 2: Include some occupational disease in special death benefit

This option would amend the \$150,000 special death benefit statute to cover deaths that occur due to certain occupational diseases, in addition to injury. Adding only certain occupational diseases would require the Board to determine which diseases to include and which to exclude.

8. Supporting Information

Endnotes

¹ The Department of Retirement Systems (DRS) has created a beneficiary form that pertains only to the \$150,000 benefit. When a covered employee or retiree dies, the beneficiary is to notify DRS. DRS provides the beneficiary with an Application for Death Benefit. Upon receipt of the application and death certificate, DRS submits the documents and necessary information to the Department of Labor and Industries (L&I) for determination whether the covered employee's or retiree's death is a result of injuries sustained in the course of LEOFF covered employment.

² Engrossed Substitute Senate Bill 5801 was codified as RCW 51.32.185.

³ If the person had minor children, an additional 2% per child is paid. The total benefits paid cannot exceed the maximum allowable benefits.

⁴ Currently Labor and Industries is using the state average wage from 2003. In July 2005, Labor and Industries will begin using the state average wage from 2004.

⁵ http://www.ojp.usdoj.gov/BJA/grant/psob/psob_main.html, viewed 2/15/05

⁶ The levels of carbon monoxide must be confirmed by medical evidence such as toxicology tests. Therefore, for heart attack deaths only, the PSOB requests a toxicology report, identifying the exact percentage of carboxyhemoglobin, to obtain evidence that carbon monoxide may have precipitated the heart attack. Blood toxicology may be performed at the time of admission to the hospital or at the time of death. PSOB will consider the number of minutes oxygen was administered from the time of collapse at the fire scene until the time the toxicology blood was drawn. By taking the blood carbon monoxide percentage and applying the number of minutes oxygen was administered from the time of collapse until the time the blood sample was drawn, PSOB can determine the approximate blood carboxyhemoglobin level at the time of collapse. The application of oxygen dissipates carbon monoxide in the blood.